

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOHN CREEKMORE and LARRILEE  
WILLIAMS,

Plaintiffs,

v.

STATE FARM MUTUAL  
AUTOMOBILE INSURANCE  
COMPANY and DEBRA DANIELS  
INSURANCE COMPANY,

Defendants.

CASE NO. C14-5281 BHS

ORDER GRANTING  
PLAINTIFFS' MOTION TO  
REMAND

This matter comes before the Court on Plaintiffs John Creekmore and Larrilee Williams' ("Plaintiffs") motion to remand (Dkt. 8). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

**I. PROCEDURAL HISTORY**

On February 25, 2014, Plaintiffs filed a complaint against Defendants State Farm Mutual Automobile Insurance Company ("State Farm") and Debra Daniels Insurance

1 Agency in Mason County Superior Court for the State of Washington. Dkt. 1. Although  
2 Plaintiffs only explicitly assert a cause of action for violations of the Washington  
3 Insurance Fair Conduct Act, RCW Chapter 48.30 (“IFCA”) (*Id.*, Exh. B, ¶¶ 3.1–3.4), it  
4 appears that they also assert causes of action for bad faith, negligence, and breach of  
5 contract (*id.*, ¶¶ 4.3, 4.6).

6 On April 3, 2013, State Farm removed the matter to this Court. Dkt. 1.

7 On May 1, 2014, Plaintiffs filed a motion to remand. Dkt. 8. On May 19, 2014,  
8 State Farm responded. Dkt. 9. On May 23, 2014, Plaintiffs replied. Dkt. 14.

## 9 II. DISCUSSION

10 In this case, Plaintiffs request remand based on the lack of the jurisdictional  
11 minimum in dispute and the lack of complete diversity between the parties. Dkt. 8. The  
12 latter issue is dispositive. “Fraudulent joinder is a term of art” and does not require an ill  
13 motive. *McCabe v. General Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987). Joinder  
14 will be deemed fraudulent where the plaintiff fails to state a cause of action against the  
15 resident defendant, and the failure is obvious according to the settled rules of the state.  
16 *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998). The defendant alleging  
17 the fraudulent joinder carries the heavy burden of demonstrating the improper joinder by  
18 clear and convincing evidence. *Hamilton Materials, Inc. v. Dow Chem. Co.*, 494 F.3d  
19 1203, 1206 (9th Cir. 2007).

20 State Farm has failed to show that the joinder of Debra Daniels Insurance Agency  
21 should be deemed fraudulent. Although State Farm appears to concede that a policy was  
22 in effect when the accident occurred, this is not clear and convincing evidence that

1 Plaintiffs can state no possible claim against the agency for negligence. For example, if  
2 the policy limit is \$100,000, as the parties seem to agree, and Plaintiffs seek \$300,000 in  
3 damages, the agent may be negligent in failing to secure a policy in the amount Plaintiffs  
4 originally requested. It may be that no such claim exists, but until this issue is resolved in  
5 state court, this Court does not have jurisdiction. Therefore, the Court grants Plaintiffs'  
6 motion because there is a lack of complete diversity.

7 **III. ORDER**

8 Therefore, it is hereby **ORDERED** that Plaintiffs' motion to remand (Dkt. 8) is  
9 **GRANTED.**

10 Dated this 3<sup>rd</sup> day of June, 2014.

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13 BENJAMIN H. SETTLE  
14 United States District Judge  
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